

AMENDED IN ASSEMBLY MAY 3, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1900

Introduced by Assembly Member Skinner

*(Coauthors: Assembly Members Chesbro, Bonnie Lowenthal, and
Ma)*

(Coauthor: Senator Liu)

February 16, 2010

An act to amend Sections 5007.7 and 6030 of, ~~and to add Sections 3407 and 4023.7 to,~~ the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1900, as amended, Skinner. Pregnant inmates and wards: least restrictive restraints.

Existing law requires the Corrections Standards Authority to establish minimum standards for state and local correctional facilities and to review those standards biennially and make any appropriate revisions, as specified.

This bill would require that the standards, by January 1, 2012, ensure that ~~inmates who are pregnant are restrained in the least restrictive way possible, consistent with the legitimate security needs of each inmate, when being transported. The bill would also require the authority to seek the advice of Correctional Medical Associates and the Academy of Correctional Health Professionals when establishing minimum standards for female inmates and pregnant inmates in local adult and juvenile facilities~~ *at no time shall women who are pregnant be shackled by the wrists, ankles, or both, except that the least restrictive restraints*

possible may be used when deemed necessary for the inmate, consistent with the legitimate security needs of the inmate, the staff, and the public.

Under existing law, pregnant inmates of the Department of Corrections and Rehabilitation, wards of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, and wards in the custody of a local juvenile facility, are to be transported in the least restrictive way possible when being taken to a hospital for purposes of childbirth.

This bill would ~~require that~~ *prohibit* inmates and wards of these facilities who are known ~~or suspected~~ to be pregnant *from being shackled by the wrists, ankles, or both, including during transport, labor, delivery, and recovery except when deemed necessary for the inmate or ward. If restraints are deemed necessary during transport, this bill would allow the person to be restrained in the least restrictive way possible, consistent with the legitimate security needs of each inmate or ward, the staff, and the public when transported to and from their respective facilities.*

~~This bill would state the intent of the Legislature that adult and juvenile state correctional facilities and local correctional and detention facilities shall develop policies to ensure that pregnant inmates are restrained in the least restrictive way, consistent with the legitimate security needs of each inmate or ward, for purposes of transportation to and from a correctional or detention facility.~~

~~Because this bill would require local officials to provide additional services, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 3407 is added to the Penal Code, to read:~~
- 2 ~~3407. (a) The Legislature finds and declares that the health~~
- 3 ~~and safety of pregnant inmates shall be a primary concern of all~~
- 4 ~~adult and juvenile state correctional facilities. The Legislature~~

1 further finds and declares that using restraints that significantly
2 limit a pregnant inmate's mobility can cause serious and undue
3 health risks to the woman and her pregnancy. Potentially harmful
4 methods of restraint include, but are not limited to, shackling by
5 the ankles, across the belly and by the wrists, by the wrists behind
6 the inmate's back, or to another person.

7 (b) It is the intent of the Legislature that adult and juvenile state
8 correctional facilities develop policies that ensure that inmates
9 who are known or suspected to be pregnant are restrained in the
10 least restrictive way possible, consistent with the legitimate security
11 needs of the inmate, for purposes of transportation to and from a
12 correctional facility. It is the Legislature's intent that these policies
13 meet the minimum standards established by the Corrections
14 Standards Authority for the proper use of restraints on pregnant
15 inmates during transport, as established pursuant to Section 6030.

16 SEC. 2. Section 4023.7 is added to the Penal Code, to read:

17 4023.7. (a) The Legislature finds and declares that the health
18 and safety of pregnant inmates shall be a primary concern of all
19 adult and juvenile local correctional and detention facilities. The
20 Legislature further finds and declares that using restraints that
21 significantly limit a pregnant inmate's mobility can cause serious
22 and undue health risks to the woman and her pregnancy. Potentially
23 harmful methods of restraint include, but are not limited to,
24 shackling by the ankles, across the belly and by the wrists, by the
25 wrists behind the inmate's back, or to another person.

26 (b) It is the intent of the Legislature that local correctional and
27 detention facilities develop policies that ensure that inmates who
28 are known or suspected to be pregnant are restrained in the least
29 restrictive way possible, consistent with the legitimate security
30 needs of the inmate, for purposes of transportation to and from a
31 correctional or detention facility. It is the Legislature's intent that
32 these policies meet the minimum standards established by the
33 Corrections Standards Authority for the proper use of restraints
34 on pregnant inmates during transport, as established pursuant to
35 Section 6030.

36 SECTION 1. *The Legislature finds and declares all of the*
37 *following:*

38 (a) *California has the third largest population of incarcerated*
39 *women in the country. Tens of thousands of women go through*

1 county jails every year and an average of 4 to 7 percent are
2 pregnant at some point in their custody.

3 (b) Using restraints that significantly limit a pregnant inmate's
4 mobility can cause serious and undue health risks to the woman
5 and her pregnancy.

6 (c) Potentially harmful methods of restraint include, but are not
7 limited to, shackling by the ankles, in front of the body, across the
8 belly and by the wrists, by the wrists behind the inmate's back, or
9 to another person.

10 (d) To avoid threatening the health of pregnant women and
11 potential legal challenges, it is critical that policies are adopted
12 ensuring that restraints are properly used with this vulnerable
13 population.

14 (e) The health and safety of pregnant inmates shall be a primary
15 concern of all adult and juvenile state and local correctional and
16 detention facilities.

17 (f) To avoid threatening the health of pregnant women and
18 potential legal challenges, it is critical that adult and juvenile state
19 and local correctional and detention facilities develop policies
20 that ensure that inmates who are known to be pregnant are
21 restrained in the least restrictive way possible, consistent with the
22 legitimate security needs of the inmate, for purposes of
23 transportation to and from a correctional facility.

24 (g) These policies must meet the minimum standards established
25 by the Corrections Standards Authority for the proper use of
26 restraints on pregnant inmates during transport, as established
27 pursuant to Section 6030.

28 ~~SEC. 3.~~

29 SEC. 2. Section 5007.7 of the Penal Code is amended to read:

30 ~~5007.7. (a) Inmates who are known or suspected to be pregnant~~
31 ~~shall be restrained in the least restrictive way possible, consistent~~
32 ~~with the legitimate security needs of each inmate, when being~~
33 ~~transported to and from a state correctional facility.~~

34 ~~(b) Pregnant inmates temporarily taken to a hospital outside the~~
35 ~~prison for the purposes of childbirth shall be transported in the~~
36 ~~least restrictive way possible, consistent with the legitimate security~~
37 ~~needs of each inmate.~~

38 5007.7. (a) At no time shall an inmate known to be pregnant
39 be shackled by the wrists, ankles, or both, including during any
40 transport to and from a state or local correctional facility, during

1 *labor, during delivery, and while in recovery after giving birth.*
2 *For purposes of transport to and from a state or local correctional*
3 *facility, restraints may be used on a pregnant inmate only when*
4 *deemed necessary for the inmate. In these cases, the least*
5 *restrictive restraints possible shall be used, consistent with the*
6 *legitimate security needs of each inmate, the staff, and the public.*
7 Upon arrival at the hospital, once the inmate has been declared by
8 the attending physician to be in active labor, the inmate shall not
9 be shackled by the wrists, ankles, or both, unless deemed necessary
10 for the safety and security of the inmate, the staff, and the public.

11 ~~SEC. 4.~~

12 SEC. 3. Section 6030 of the Penal Code is amended to read:

13 6030. (a) The Corrections Standards Authority shall establish
14 minimum standards for state and local correctional facilities. The
15 authority shall review those standards biennially and make any
16 appropriate revisions.

17 (b) The standards shall include, but not be limited to, the
18 following: health and sanitary conditions, fire and life safety,
19 security, *transport*, rehabilitation programs, recreation, treatment
20 of persons confined in state and local correctional facilities, and
21 personnel training.

22 (c) The standards shall require that at least one person on duty
23 at the facility is knowledgeable in the area of fire and life safety
24 procedures.

25 (d) The standards shall also include requirements relating to the
26 acquisition, storage, labeling, packaging, and dispensing of drugs.

27 (e) The standards shall require that inmates who are received
28 by the facility while they are pregnant are provided all of the
29 following:

30 (1) A balanced, nutritious diet approved by a doctor.

31 (2) Prenatal and post partum information and health care,
32 including, but not limited to, access to necessary vitamins as
33 recommended by a doctor.

34 (3) Information pertaining to childbirth education and infant
35 care.

36 (4) A dental cleaning while in a state facility.

37 ~~(f) By January 1, 2012, the standards shall ensure that inmates~~
38 ~~who are known or suspected to be pregnant are restrained in the~~
39 ~~least restrictive way possible, consistent with the legitimate security~~

1 needs of each inmate, when being transported to and from a state
2 or local correctional facility.

3 ~~(g) The standards shall provide that at no time shall a woman~~
4 ~~who is in labor be shackled by the wrists, ankles, or both including~~
5 ~~during transport to a hospital, during delivery, and while in~~
6 ~~recovery after giving birth, except as provided in Section 5007.7.~~

7 *(f) The standards shall provide that at no time shall a woman*
8 *known to be pregnant be shackled by the wrists, ankles, or both,*
9 *including during any transport to and from a state or local*
10 *correctional facility, during labor, during delivery, and while in*
11 *recovery after giving birth, except as provided in Section 5007.7.*

12 ~~(h)~~

13 *(g) In establishing minimum standards, the authority shall seek*
14 *the advice of the following:*

15 *(1) For health and sanitary conditions:*

16 *The State Department of Health Services, physicians,*
17 *psychiatrists, local public health officials, and other interested*
18 *persons.*

19 *(2) For fire and life safety:*

20 *The State Fire Marshal, local fire officials, and other interested*
21 *persons.*

22 *(3) For security, rehabilitation programs, recreation, and*
23 *treatment of persons confined in correctional facilities:*

24 *The Department of Corrections and Rehabilitation, state and*
25 *local juvenile justice commissions, state and local correctional*
26 *officials, experts in criminology and penology, and other interested*
27 *persons.*

28 *(4) For personnel training:*

29 *The Commission on Peace Officer Standards and Training,*
30 *psychiatrists, experts in criminology and penology, the Department*
31 *of Corrections and Rehabilitation, state and local correctional*
32 *officials, and other interested persons.*

33 *(5) For female inmates and pregnant inmates in local adult and*
34 *juvenile facilities:*

35 *The California State Sheriffs' Association, the Chief Probation*
36 *Officers' Association of California, Correctional Medical*
37 *Associates, the Academy of Correctional Health Professionals,*
38 *and other interested persons. Probation Officers' Association of*
39 *California, and other interested persons.*

1 ~~SEC. 5.~~

2 ~~SEC. 4.~~ Section 222 of the Welfare and Institutions Code is
3 amended to read:

4 222. (a) Any female in the custody of a local juvenile facility
5 shall have the right to summon and receive the services of any
6 physician and surgeon of her choice in order to determine whether
7 she is pregnant. If she is found to be pregnant, she is entitled to a
8 determination of the extent of the medical services needed by her
9 and to the receipt of those services from the physician and surgeon
10 of her choice. Any expenses occasioned by the services of a
11 physician and surgeon whose services are not provided by the
12 facility shall be borne by the female.

13 ~~(b) Wards who are known or suspected to be pregnant shall be~~
14 ~~restrained in the least restrictive way possible, consistent with the~~
15 ~~legitimate security needs of each ward, when transported to and~~
16 ~~from a local juvenile facility. A ward shall not be shackled by the~~
17 ~~wrists, ankles, or both during labor, including during transport to~~
18 ~~a hospital, during delivery, and while in recovery after giving birth,~~
19 ~~subject to the security needs described in this section.~~

20 ***(b) At no time shall a ward known to be pregnant be shackled***
21 ***by the wrists, ankles, or both, including during any transport to***
22 ***and from a local juvenile facility, during labor, during delivery,***
23 ***and while in recovery after giving birth. For purposes of transport***
24 ***to and from a local juvenile facility, restraints may be used on a***
25 ***pregnant ward only when deemed necessary for the ward. In these***
26 ***cases, the least restrictive restraints possible shall be used,***
27 ***consistent with the legitimate security needs of each ward, the***
28 ***staff, and the public.*** Upon arrival at the hospital, once the ward
29 has been declared by the attending physician to be in active labor,
30 the ward shall not be shackled by the wrists, ankles, or both, unless
31 deemed necessary for the safety and security of the ward, the staff,
32 and the public.

33 (c) For purposes of this section, “local juvenile facility” means
34 any city, county, or regional facility used for the confinement of
35 juveniles for more than 24 hours.

36 (d) The rights provided to females by this section shall be posted
37 in at least one conspicuous place to which all female wards have
38 access.

1 ~~SEC. 6.~~

2 SEC. 5. Section 1774 of the Welfare and Institutions Code is
3 amended to read:

4 1774. (a) Any female who has been committed to the
5 Department of Corrections and Rehabilitation, Division of Juvenile
6 Facilities shall have the right to summon and receive the services
7 of any physician and surgeon of her choice in order to determine
8 whether she is pregnant. The director may adopt reasonable rules
9 and regulations with regard to the conduct of examinations to
10 effectuate that determination.

11 (b) If she is found to be pregnant, she is entitled to a
12 determination of the extent of the medical services needed by her
13 and to the receipt of those services from the physician and surgeon
14 of her choice. Any expenses occasioned by the services of a
15 physician and surgeon whose services are not provided by the
16 facility shall be borne by the female.

17 (c) A ward who gives birth while under the jurisdiction of the
18 Department of Corrections and Rehabilitation, Division of Juvenile
19 Facilities or a community treatment program has the right to the
20 following services:

- 21 (1) Prenatal care.
22 (2) Access to prenatal vitamins.
23 (3) Childbirth education.

24 ~~(d) Wards who are known or suspected to be pregnant shall be~~
25 ~~restrained in the least restrictive way possible, consistent with the~~
26 ~~legitimate security needs of each ward, when transported to and~~
27 ~~from a juvenile facility. A ward shall not be shackled by the wrists,~~
28 ~~ankles, or both during labor, including during transport to a~~
29 ~~hospital, during delivery, and while in recovery after giving birth,~~
30 ~~subject to the security needs described in this section.~~

31 (d) *At no time shall a ward known to be pregnant be shackled*
32 *by the wrists, ankles, or both, including during any transport to*
33 *and from a juvenile facility, during labor, during delivery, and*
34 *while in recovery after giving birth. For purposes of transport to*
35 *and from a local juvenile facility, restraints may be used on a*
36 *pregnant ward only when deemed necessary for the ward. In these*
37 *cases, the least restrictive restraints possible shall be used,*
38 *consistent with the legitimate security needs of each ward, the*
39 *staff, and the public. Upon arrival at the hospital, once the ward*
40 *has been declared by the attending physician to be in active labor,*

1 the ward shall not be shackled by the wrists, ankles, or both, unless
2 deemed necessary for the safety and security of the ward, the staff,
3 and the public.

4 (e) Any physician providing services pursuant to this section
5 shall possess a current, valid, and unrevoked certificate to engage
6 in the practice of medicine issued pursuant to Chapter 5
7 (commencing with Section 2000) of Division 2 of the Business
8 and Professions Code.

9 (f) The rights provided to females by this section shall be posted
10 in at least one conspicuous place to which all female wards have
11 access.

12 ~~SEC. 7. If the Commission on State Mandates determines that~~
13 ~~this act contains costs mandated by the state, reimbursement to~~
14 ~~local agencies and school districts for those costs shall be made~~
15 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
16 ~~4 of Title 2 of the Government Code.~~